IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 724 of 1986
with
CRIMINAL REVISION APPLICATIN No.183 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
RAMESH LOTAN PAVAR & 7 - Opponent(s)

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Appearance :
MR KT DAVE, APP for Appellant(s) : 1,

MR YU MALIK for Opponent(s) : 1 - 8.

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE C.K.BUCH)

1. The State of Gujarat has assailed the legality and validity of the order of acquittal passed by the Additional Session Judge, Surat in Sessions Case No.75 of 1985 dated 31.3.1986. Total 8 accused persons were tried for the offence punishable under Sections 147, 148, 149, 207, 341, 307 and 506 of the Indian Penal Code and also under Section 135 of the Bombay Police Act.

2. The judgment assailed mainly on the ground mentioned in para-5 of the memo and learned APP Mr.K.T.Dave has taken us through

the grievance of the State expressed by way of number of grounds of challenge. The submission of Mr.Dave that responsible officers serving with Gujarat State Electricity Board were manhandled, assailed and threatened by the accused persons being active members and/or office bearer of worker's union known as “Bijli Mazdur Panchayt” with the help of about 7 to 8 unknown persons. The accused persons have formed unlawful assembly and inflicted injuries on 3 officers. The intention of the assembly was to kill the injured or any one of them. In such a situation the learned trial Judge ought not to have acquitted the accused persons on some minor infirmities pointed out by the learned trial Judge in paras-23 to 29 of the judgment under challenge. When the case of the prosecution is that the accused persons named in the FIR were very close to the victim and one of them was physically beaten and pulled down on the

earth. In that factual contingency the learned trial Judge at least ought to have held that there is adequate evidence as to the identity of the accused persons.

3. One of the argument of Mr. Dave is that 3 injured eye witnesses have not been believed. They have no reason to implicate the accused persons falsely, otherwise they could have named more members of the very union because the say of the complainant is consistent from the beginning that about 15 persons had formed unlawful assembly for ulterior motive to pressurize the management and mainly the accused persons. The accused No.1 was mainly concerned with the workers management and other 2 injured persons were responsible officers of the management of the Thermal Power Station, Ukai, of Taluka Vyara.

4. To appreciate the say of the learned APP and the grievance placed before us by the

revisionary we would like to mention the case of prosecution in brief.

5. The case of the prosecution is reflected in the charge Ex.2 framed on 13.12.1985. The gist of the charge is that “the accused persons on or about 20.2.1985 at about 7:30 p.m at Ukai, Taluka Vyara, District – Surat, and other unidentified 7 to 8 persons were members of the unlawful assembly at the place described in the panchnama of the scene of offence and the common object of this unlawful assembly was to cause death of or to cause hurt, grievous hurt to complainant. Vasantlal Rasiklal Bhatt, Jagdishchandra Nagindas Surati, Narendrakumar Babubhai Parikh or to commit any other offence and at that time the accused persons were armed with stones and in prosecution of this common object of the unlawful assembly the accused Sadashiv and other accused persons wrongfully restrained them and the accused Sadashiv,

Sukanji, Ramesh Ashok, Vijai and Devabhai started giving blows with stones in hands on the head, left shoulder, abdomen, left wrist joint, palm of the complainant – Vasantlal Rasiklal Bhatt voluntarily and they caused hurt on the face, two dies of the eyes, nack, left leg by inflicting blows with stones in hands on the witness Jagdishchandra Nagindas Surati and the accused Vijal, Ramesh Pavar caused hurt on face on back and on left thigh of the witness Narendra Babulal Parikh by inflicting blows with stones in hands voluntarily. Above acts of the accused persons were done with such intention or knowledge and under such circumstances that if any one would have died they would have been guilty for the offence of committing murder. Further they gave criminal intimidation of causing death to the complainant Shri V.R.Bhatt, Shri J.N.Surti, Shri Parikh and thereby the accused persons have committed an offences punishable under

Sections 147, 148, 149, 307, 341, 506 of the I.P.C. Further they are charged for that on or about above said date time and place. The accused persons were armed with weapons in disregard of notification prohibiting carrying of arms etc., issued by the District Magistrate, Surat under the provision of Section-37 of Bombay Police Act and publicly published the said notification and it was in force in Ukai on that day".

6. It is the say of the prosecution that Gujarat Electricity Board has two generating stations, namely, Thermal Power Station and Hydo Power Station and the management is providing residential accommodation to the employees working in the said two Power Stations. The Gujarat Electricity Board (which will hereinafter referred to as 'GEB' for short) had constructed residential quarters and the area is known as GEB Colony. At the relevant point of time one Dr. S.M.

Shah was working as the Medical Officer in the Hospital run by GEB for the convenience of workers and the resident of GEB Colony. Mr. Thakorbhai G. Desai was the Chief Engineer of the GEB at Ukai, Mr.V.R. Bhatt was working as Industrial Relation Officer at Ukai. In the same way Mr. N.B.Parikh, Mr.J.N. Surti and Mr.R.K.Thakkar were Executive Engineers in the Power Station at Ukai and Mr.Tomar was a Security Inspector. The officers were residing in the quarters allotted to them in the GEB Colony. As the officers mainly Executive Engineers and Mr.V.R.Bhatt being Industrial Relation Officers were defending the say of the GEB in the proceedings before the Labour Court, considering the conduct of some of the employees they instituted chapter cases against the accused Sadashiv and Ramesh Lotan Pavar before the incident. On the date of incident when Mr.V.R. Bhatt, Mr.J.N.Surti, Mr. N.B.Parikh alongwith Mr.R.K.Thakkar were

on road as usual on their evening walk on 20.2.1985 at about 7:30 they were assaulted by about 15 persons and all the 3 were inflicted injuries mentioned in the Medical Certificate produced in the trial. It is not necessary for us to mention the details of injuries. The same has been considered by the learned trial Judge, but it is clear that the nature of injury inflicted or found on the body of the persons injured are mainly simple in nature and are possible by hard and blunt substance.

7. To prove the case, the prosecution has examined number of witnesses including Medical Officers who had examined all the 3 injured witnesses. The learned Trial Judge has considered the entire set of evidence including the deposition of PW-3 – Mr. Vashant Bhatt Ex.19 (page -85 of the paper book), PW-5 Jagdishchandra Ex.37 (page-129 of the paper book) and PW-8 Narendrakumar

Ex.44 (page-147 of the paper book). We have carefully considered the Medical Certificate issued by the doctor of GEB Hospital, Ukai and the deposition of the doctor who had examined initially all these three witnesses and the version of Dr. Pradip H. Pethay Ex.65. Dr.Pradip H. Pathay is a Neurologist and he has been examined by the prosecution to prove the gravity of the nature and the injury sustained by PW J.N.Surti. After the examination of all the three witnesses doctor of GEB Hospital, Ukai, all the three were taken to Government Civil Hospital and Dr. Babubhai Chaudhari had treated them. Dr.Chaudhari has examined 2 out of 3 injured witnesses and has issued Certificate and there is no inconsistency. The learned trial Judge has considered the medical evidence led by the prosecution. We have also considered the nature of injuries found on the body of the persons accused. There is some force in the argument of Mr.K.T.Dave that there is no

element of inconsistency or conflict qua the medical evidence is concerned. The learned trial Judge has also not categorically held that the story of sustaining injury during the assault is a falsehood, in that situation the version of the injured persons ought to have been accepted. The learned trial Judge has considered the following aspects for recording acquittal of the accused in holding that the prosecution has not proved the charge beyond reasonable doubt.

(a) All the 8 persons named in the complaint are either union leaders or workers and, therefore, there was inimical feeling between the accused and the complainant as well as the injured witnesses as the set of witnesses examined by the prosecution are mainly pro-management. The prevailing inimical terms between the parties are a double edged weapon so it would not be safe to hold the accused persons responsible.

(b) The learned APP has fairly conceded that the accused No.6 Chimanlal Kikaji should not be held responsible because of the factual aspect brought on record and the defence pleaded by him when the trial Judge was hearing the final arguments. On one hand, learned APP concedes the case against the accused No.6 then what weightage should be given as to the identity of the rest of the accused is a question and that question according to us has been rightly addressed by the learned trial Judge.

8. Undisputedly the incident in question has occurred at about 7:30 to 7:32 p.m. In some seconds or minutes the incident was over. It was not possible to state specifically that how many members were there in the mob that has assaulted all the 4 officers, because there was no artificial light where they were assaulted. We have carefully considered the

map prepared by the Revenue Officer (Ex.16) and the distance of other places that were there in the nearby area. In absence of any independent evidence as to involvement of accused except the persons who have interest in the result of the case it was not safe for the learned trial Judge to say that the prosecution has successfully established the charge. It was not possible because of the darkness at the place of incident to identify assailants. In para-23 of the judgment the learned trial Judge has considered that the incident had occurred after about one hour from the sun-set time. The learned trial Judge has also considered the sun set time on 20.2.1985. It is also considered that as per the government diary and 'Panchang' relied on by the State Government in the State diary it was the first day of bright (first half) of lunar month so there could not be even moon light. In absence of any light 8 persons could not have been identified as alleged by

the prosecution is one of the finding. Merely because some chapter cases were filed a group of officers in retaliation normally would not be assaulted like this in such a manner. Chapter cases are not that grave or serious proceedings. By decent and peaceful behaviour one can get out of the gravity of the proceeding, considering the relevant scheme in the Code of Criminal Procedure. When it was not possible to state that actually how many members were there in the assembly then in that situation it was risky for the Court to accept the versions of these 3 witnesses as to involvement of the accused persons. The learned trial Judge has considered the panchnama and it is observed that the road where the witnesses were assaulted has standing trees besides it so the place must be more darker than other open places and if the number of members are more according to us they are capable of creating more hurdles in the identification of

assailant persons in dark. Injured witnesses including Mr.Surti has fairly accepted that the assault was very sudden and it was not possible for them to see as to who was beating them and how, when one of the injured eye witnesses has stated so it would not be either proper for us to say that the finding recorded by the learned trial Judge can be said to be erroneous and there is grave error has been committed in evaluating the evidence.

9. The learned trial Judge has also observed that the evidence of these 3 injured witnesses looks like evidence of stranger. This conflicting evidence of all these 3 witnesses as to who informed whom about the identity of the assailant individual and how all the 3 were able to name 8 persons as accused in the FIR Ex.39. We have carefully gone through the FIR. It is with detailed description. The learned trial Judge has

discussed that it was possible for the injured persons to name maximum number of accused very initially when they were taken for treatment or they were rescued. The FIR is lodged after 3 hours. Period of 3 hours cannot be said to be a long gap of time, but when the Apex Court has observed that whether the FIR should be considered a delayed FIR or not would determine on facts of each case and in the present case the learned trial Judge who has appreciated the evidence and has recorded evidence of number of witnesses has said that the FIR Ex.69 is not prompt FIR and it suffers from infirmity of delay then it would not be either legal or proper for us to reverse the finding by replacing our own reasons, as per settled legal position, in absence of perversity while evaluating this part of evidence. If the accused were inimical to the injured witnesses the injured witnesses were knowing the accused persons because of their acquaintance then they

should have been named specifically at the earliest and this part could not have been ignored by the learned trial Judge and according to us the learned trial Judge has rightly considered this point placed by the defence side.

10. While evaluating the evidence the trial Judge was supposed to consider the evidence led by the defence witnesses and the evidence led by the defence witnesses is capable of creating doubt as to the presence of the certain accused persons at the spot when the injured persons were assaulted. The learned trial Judge has accepted that the accused Nos.1 and 6 have successfully established their alibi and the learned APP has conceded the case of the prosecution qua accused No.6. This aspect is sufficient to create cloud of doubt and the accused persons at least can claim the benefit of doubt. So if this Court accept that the injured persons have

sustained injuries in the assault at the very place on the day mentioned in the charge it would not be proper for us to say that the prosecution has also successfully proved the involvement of all the 8 accused or any of them in the offence as alleged. The learned trial Judge has ultimately held that “I am of the opinion that reliable evidence is not on record to establish the presence of this accused persons in that group of members who assaulted these Executive Engineers and caused injuries”.

11. The reasons recorded by the learned Judge are logical and there is no element of perversity or patent illegality. The Apex Court in a decision in the case of **Dwarkadas v. State of Haryana, reported in (2002) 1 SCC 204**, has reiterated the principles of law where it has been held that the judgment and order of acquittal normally should not be reversed merely because the other view is

possible. In the same way, the observations of the Apex Court in the case of **Kanshiram v. State of Madhya Pradesh (Re.Para-21), reported in AIR 2001 SC 2902,** in respect of appeal against the order of acquittal, positively would help the accused. As per the settled legal position, while appreciating the order of acquittal, the Court should go slow in reversing the order of acquittal unless the order is absolutely illegal and perverse. In view of the ratio of the above cited decision, there is no merit in the present Appeal and the same is required to be dismissed.

12. As per the settled legal position, the Revision Application filed by a private party or at the instance of the informant against the order of acquittal should be entertained in a narrow compass and the Court must question itself while exercising revisional

jurisdiction while dealing with such Revision Applications. In the case of **Bindeshwari Prasad and others v. State of Bihar, reported in AIR 2002 SC 2907**, the Apex Court observed that it has repeatedly been held that the High Court should not reappreciate the evidence to reach to a finding different from the trial Court in absence of manifest illegality resulting into great miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted. It is further observed that at the best the High Court thought that the prosecution witnesses were reliable while the trial Court took an opposite view.

13. According to the learned trial Judge the case against the accused has not been established beyond the reasonable doubt. We are in agreement with the findings thereby adopting the detailed reasons assigned by the

learned trial Judge. We confirm the acquittal. The Appeal is, therefore, dismissed.

14. In view of above finding, the Revision Application does not survive. It is accordingly disposed off.

(C. K. BUCH, J.) (K. A. PUJ, J.)

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